EDITOR'S NOTE

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87-1204 (1)

NO. _____

Supreme Court, U.S.
FILED
JAN 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1987

JOHN JONES, SR. and GAIL KIM JONES,
Petitioners

VERSUS

BOROUGH OF MORRISVILLE, ET AL.,
Respondent

A N D

JOHN JONES, SR. and GAIL KIM JONES,
Petitioners

VERSUS

PRINCETON UNIVERSITY, ET AL.,
Respondent

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

John Jones, Sr. and Gail Kim Jones
PRO SE

260 Harper Ave.
Morrisville, PA. 19067
(215) 295-5132

QUESTIONS PRESENTED

1. Are not there such "consequences of magnitude" in a §1983 civil rights suit that pro se litigants are entitled to assistance of counsel?

2. Do the Constitutional rights of privacy, liberty of contract, freedom of speech, freedom of association, meaningful access to the courts and procedural due process mandate petitioners' right to assistance of counsel?

3. Can the Courts deprive a pro se litigant of assistance of counsel?

4. Does the Constitution <u>permit or require</u> the government (court) to deny assistance of counsel in civil matters in any way different in effect from the guarantees given citizens in criminal "matters"?

LIST OF ALL PARTIES

John Jones, Sr. and Gail Kim Jones

vs.

Borough of Morrisville, Lee Rockafellow, John Hoffman, Harry Merker, William Potashnick, Eugene Gaydula, Officer Herron, Officer Armstrong, Township of Falls, Ray Nearhood, James Kettler, Lieutenant Clark, Sergeant Schaffner, Detective Dapp, Detective Cosgrove, Nicholas Striluk, Officer Kutalek, Mr. Johns, Charles E. Ronaldo, Jeffrey M. Williams, and Armando Fralliccciardi

John Jones, Sr. and Gail Kim Jones

vs.

Princeton University: Trustees of Princeton University, Princeton University Plasma Physics Laboratory, Princeton University Security Division, Officer Watson, Officer Trani; Plainsboro Police Department: Sergeant Michael Donahue and Officer Robert Lasko

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TABLE OF AUTHORITIES

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

JOHN JONES, SR. and GAIL KIM JONES
PETITIONERS

vs.

BOROUGH OF MORRISVILLE, ET AL.
RESPONDENT

A N D

PRINCETON UNIVERSITY, ET AL.
RESPONDENT

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petitioners, John Jones, Sr., and Gail Kim Jones, Pro Se, respectfully pray that the Petition for Writ of Certiorari be granted in this case.

OPINIONS DELIVERED IN THE COURTS BELOW.

The opinions of the Court of Appeals that are the basis of this petition are reported as Jones, et al. v. Borough of Morrisville, et al, C.A.Misc. No. 87-8031, dated September 15, 1987, and the opinion denying panel rehearing and suggestion of rehearing en banc as Jones, et al. v. Borough of Morrisville, et al., C.A.Misc. No. 87-8031, dated October 13, 1987. A copy of the opinions is attached hereto in Petitioners' Appendix at A-1 and A-2.

Additionally, the opinions of the Court of Appeals that are the basis of this petition are reported as Jones, et al. v. Princeton University, et al., C.A.Misc. No. 87-5548, dated September 14, 1987, and the opinion denying panel rehearing and suggestion of rehearing en banc as Jones, et al. v. Princeton University, et al., C.A.Misc. No. 87-5548, dated October 8, 1987. A copy of the opinions is attached hereto in Petitioners' Appendix at A-3 and A-4.

Other opinions below pertinent to the determination of this case are:

United States District Court for the Eastern District of Pennsylvania: The Court's Memorandum and Order depriving pro se litigants of assistance of counsel and certifying the question to the United States Court of Appeals reported as Jones, et al. vs. Borough of Morrisville, et al., D.C.Civ. No. 85-1859, dated May 5, 1987. A copy of the opinion is attached hereto in Petitioners' Appendix at A-5 through A-44.

United States District Court for the District of New Jersey: The Court's oral Opinion reported as Jones, et al. vs. Princeton University, et al., D.C.Civ. No. 84-4528, dated June 24, 1987. A copy of the pertinent transcript of the proceeding is attached hereto in Petitioners' Appendix at

JURISDICTION

Petitioners invoke the jurisdiction of this Court by way of a Petition for Writ

of Certiorari through the authority of 28 U.S.C. §1254 (1).

Additionally, petitioners recite that 28 U.S.C. §2403 (a) may be applicable as the constitutionality of an Act of Congress may be drawn into question. No court has certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn in question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

Petitioners seek to invoke the provisions of the Constitution of the United States, Amendments I, V, VI, and XIV. Petitioners also rely on 28 U.S.C.A. 1654, which is based on 28 U.S.C. 394 (1940 Edition) and read as follows:

> In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

One case also involves Local Rules of the United States District Court for the Eastern District of Pennsylvania, Rule 18:

(a) The filing of a pleading, motion or stipulation shall be deemed an entry of appearance. Other appearances of counse shall be by praecipe filed with the Clerk.

(c) An attorney's appearance may not be withdrawn except by leave of court, unless another attorney of this court shall at the same time enter an appearance for the same party.

STATEMENT OF THE CASES

Jones, et al. vs. Borough of Morrisville, et al. (C.A.No. 87-8031; D.C. Civ.No. 85-1859)

The facts of this case also, in part, are set forth in the opinion of the United States District Court, Eastern District, C.A.No. 85-1859, dated May 6, 1987.

As a result of violations of petitioners' rights by respondents, petitioners filed a civil rights action seeking injunctive and declaratory relief and punitive and other damages pursuant to 42 U.S.C. 1983, 28 U.S.C. 1343(3)(4), 28 U.S.C. 1331 and the United States Constitution, Amendments I, II, IV, XIV. Petitioner, J.Jones is a whistleblower; and G.Jones is a police officer.

Petitioners accessed the federal courts in a pro se status; however, petitioners informed the courts of the

need and desire to proceed with the assistance of counsel due to the complex and multi-faceted nature of the civil rights action. Petitioners asserted a right to assistance of counsel for pro se litigants arising from the United States Constitution, Amendments I, V, VI and XIV.

The District Court denied access to the court by petitioners with the assistance of counsel on January 28, 1987, and again on February 19, 1987, stating petitioners could not use an attorney at times and appear pro se at others (relying on Local Rule 18(a)(c)) nor could an attorney act as "co-counsel" with petitioners (exercising discretion to manage a case under Fed.R.Civ.P. 16).

Thereafter, petitioners requested the District Court to certify the question of pro se litigants proceeding with assistance of counsel to the Third Circuit Court of Appeals. On May 6, 1987, the District Court certified said question stating that the issue of whether the court, by applying

Local Rule 18(a)(c), had denied petitioners any constitutional right to hire or use counsel and raised an important question as to the fairness of the proceedings. The District Court stated that determination of that issue would materially advance the ultimate termination of the suit.

Pursuant to 28 U.S.C. 1292(b), petitioners, pro se, filed a Petition for Permission to Appeal to the Third Circuit Court of Appeals on May 18, 1987, which the Court of Appeals denied, without opinion. Petitioners, pro se, then filed a Motion for Rehearing and Suggestion for Rehearing En Banc, which the Court of Appeals denied, without opinion. From this Order this Petition is taken.

Jones, et al. vs. Princeton University, et al. (C.A.No. 87-5548; D.C.Civ.No. 84-4528)

As a result of violations of petitioners rights by respondents, petitioners filed a civil rights action seeking punitive and other damages pursuant to 42 U.S.C. 1983, 28 U.S.C. 1343, 28 U.S.C. 1331 and the United

States Constitution, Amendments I, IV, V, VI, VIII, IX, and XIV.

Petitioners accessed the federal courts in a pro se status; however, petitioners informed the court of the need and desire to proceed with the assistance of counsel due to the complex and multi-faceted nature of the civil rights action. Petitioners asserted a right to assistance of counsel for pro se litigants arising from the United States Constitution, Amendments I, V, VI and XIV.

Petitioners raised the issue of assistance of counsel on June 24, 1987, preceding a hearing on a Motion for Summary Judgment, and hired counsel contacted the District Court Judge to relate his availability to provide said assistance. The District Court denied petitioners' request for assistance of counsel and went forward with the Summary Judgment hearing.

Petitioners, pro se, appealed the District Court Order of Summary Judgment

on August 7, 1987, and the Court of Appeals denied stating same was appealed from a non-appealable order.

Petitioners, pro se, then filed a Motion for Rehearing and Suggestion for Rehearing En Banc, and the Court of Appeals denied same, without opinion.

Petitioners raised the issue of pro se litigants' right to assistance of counsel in the above-mentioned Appeal and Motion for Rehearing, and it is only that issue of said appeal from which this Petition is taken.

REASONS FOR GRANTING THE WRIT

ARGUMENT

Do we the people have the right to access our court system to the best of our ability to redress our grievances? Fundamentally the answer should be "yes," but in reality our appellate system has sanctioned a departure by the lower courts of this accepted and usual course and thereby are not protecting these fundamental rights!

The issues relevant to this case are relevant to every pro se litigant before the courts -- to every litigant! It is this issue that will decide whether we, as individual citizens, have the basic First, Fifth and Fourteenth Amendment freedoms -- a freedom of choice when we stand before our court systems to redress our grievances.

And, therefore, the questions involved are of exceptional importance -- not just to the individual petitioners, but to the public as a whole. Layne & Bowler Corp. v. Western Well Works, 261 US 387, 393; Rice v. Sioux City Cemetary, 349 US 70, 79.

These issues reflect the more important legal problems within the realm of the Supreme Court's jurisdiction because it goes "beyond the academic or the episodic." Rice v. Sioux City Cemetary, 349 US 70, 74. These issues affect why, when, where, what and most importantly how each of us accesses the courts. For example, in the United States District Court system for the Eastern District of Pennsylvania alone, there are approximately

900 pro se civil litigants for 1987 who are barred of assistance of counsel. Conversely, there are another 7,600 litigants who are barred from self-expression and self-representation because there is 'counsel of record." See Patterson v. Lamb, 329 US 539, where the status of thousands were affected by the court's decision.

Any statute that prohibits such fundamental First and Fifth Amendment Constitutional rights must be unconstitutional on its face. This constitutional question can effectively be isolated from all other matters surrounding a litigation, and yet at the same time the determination of this issue carries such weight that it effects all of those said other matters.

To fail to review this question now serves no purpose; it only prolongs the court's interference with our rights. It is not a matter of mere potential impairment; but every facet, every day, in every litigation these fundamental rights are impaired by the court's interference with

Constitutional rights within the court process. Communist Party v. Subversive Activities Control Board, 367 US 1, 70-81. The perspective of time will not change the issue, and time will not make it go away! All impoverished plaintiffs are affected.

The question is important to all situations before the courts, as distinguished from particular types of cases. It is important to all the courts of the land particularly the federal courts, as distinguished from particular jurisdictions.

This issue also revolves around the construction and application of an act of Congress, that is, 28 U.S.C.A. 1654. The significance of the issue in the administration of the statute lends importance to the pressing need for judicial review! U.S. v. Ruzicka, 329 US 287. The review sought does not in any way require an analysis of the particular facts. It is not whether these particular facts warrant assistance of counsel, but whether in any

case, under any circumstances, in any court do we the people have the right to access the courts in the best means possible to redress a grievance. The question is clearly a legal controversy of importance! It will preserve for all litigants their right to assistance of counsel. Petitioners assert that "assistance" means assistance.

A decision not to correct the administration of this statute is a decision to let the administration of the law be governed not by the aim of the legislation and Constitution, but by a hostility towards pro se litigants by the courts and by lobbyists for the legal industry. See Wilkerson v. McCarthy, 336 US 53, 69, where the court stated the criterion in granting or denying certiorari is not who loses below but whether the jury function has been respected. See also Hickman v. Taylor, 329 US 495; Upshaw v. U.S., 335 US 410; and Schlagenhauf v. Holder, 379 US 104, 109, where the Supreme Court granted certiorari to exercise the

court's power of supervision over the construction of federal rules of civil and criminal procedure.

Are not there such "consequences of magnitude" in a §1983 civil rights suit that pro se litigants are entitled to assistance of counsel?

Several of the Court of Appeal Circuits have found that a necessity for counsel may lie in a complex §1983 civil action.

For example, in Henry v. City of Detroit Manpower Dept., 739 F.2d 1109 (1984), the Sixth Circuit noted that Congress clearly recognized in the Civil Rights Act that "many civil rights grievants would be likely to be indigent and 'unable to employ counsel,' and ... that the very nature of the litigation authorized was likely to be complex so as to require counsel for preparation and presentation in court." The Court of Appeals quotes the 92nd Congress at page 1112,

> The complainant who is usually a member of a disadvantaged class (for example, in this case a whistleblower), is opposed by an

> employer who not infrequently is one of the nation's major producers, and who has at his disposal a vast array of resources and legal talent (In this case powerful insurance companies and experienced lawyers). ...The primary concern must be protection of the aggrieved person's option to seek a prompt remedy in the best manner available.

The Sixth Circuit then goes on to say:

> This imbalance in civil rights litigation is at the center of the right to counsel issue because it illustrates the futility - probably impossibility - of a civil rights plaintiff who is unable to hire counsel proceeding pro se after rejection of such a motion for appointment of counsel.

See also Wright v. Dallas County Sheriff Dept., 660 F.2d 623 (5th Cir, 1981); McKeever v. Israel, 689 F.2d 1315 (7th Cir., 1982); White v. Walsh, 649 F.2d 560 (8th Cir., 1981); Ulmer v. Chancellor, 691 F.2d 209 (5th Cir., 1982); Johnson v Williams, 788 F.2d 1319 (8th Cir., 1986); Caruth v. Pinkney, 683 F.2d 1044 (7th Cir., 1982); Ray v. Robinson, 640 F.2d 474 (3rd Cir., 1981).

Although the above-listed cases speak to appointment of counsel, their importance to this immediate issue lies in the fact that

a standard has generally been accepted that there is a necessity for assistance of counsel.

Given this fact, the only question that remains then is why, if the necessity is obvious, can't pro se litigants access the courts and present their grievance in the most meaningful (and affordable) way -- with assistance of counsel. As in all litigations, petitioners have been a part of the case since the beginning of the aggrieved conducts. Petitioners know the record. Petitioners know what happened and where the account of any incident is to be found. Petitioners know the facts of the case. Petitioners lack of eloquence will largely be compensated for by the plenitude of their knowledge. However, they are still lacking in essential skills.

The relationship between an attorney and principle is personal, and, as in all relationships of this nature, the rights and duties may not generally be assigned or delegated without consent of all parties, especially where the assignment or delegation

renders the performance less valuable to the party receiving it. Obviously, the attorney and principle would both benefit from the assistance of each other in light of a complex, multi-faceted litigation.

And, certainly, assistance of counsel in a legally complex litigation will ease the court's management of the case, cause a speedier conclusion to the case, avoid subsequent appeal and resulting retrial of all the issues and related expense thereof, as well as protect valued constitutional rights.

Do the Constitutional rights of privacy, liberty of contract, freedom of speech, freedom of association, meaningful access to the courts and procedural due process mandate petitioners' right to assistance of counsel?

As Justice John Marshall Harlan found in Griswald v. Conn., 381 US 479, privacy is Constitutionally assured by way of the Fourteenth Amendment. See also Roe v. Wade, 410 US 113 (1973). Petitioners contend

that it is indeed a private right to indulge our First-Amendment right to freedom of expression within the court process, which in this particular case is aimed at redress of grievances brought upon us by State Actors.

Petitioners are also entitled to equal protection guarantees, as it appears on the face of the Fourteenth Amendment, in their First Amendment right to redress of grievances. Where the kind of redress of grievance depends on the amount of money one has, and the related availability of legal assistance, there can be no equal justice. The government may not foreclose to a person who exercises their First Amendment right the prospects of life and liberty that are open to others equally situated. The lower courts have done that. As Judge Rubin stated in Knighton v. Watkins, 616 F.2d 795:

> ...appointment of a lawyer provides the unlettered inmate with an opportunity to obtain representation equally qualified with the professional counsel usually provided by the state for the defendant.
>
> (emphasis added)

The Fourteenth Amendment also guarantees petitioners the right of meaningful access to the courts as found in Boddie v. Conn., 401 US 371 (1971), as well as being protected by First Amendment right to petition. Certainly petitioners' meaningful access to the courts has been nullified by this lack of "assistance of counsel" in view of this exceedingly complex case and the inability of pro ses to best present the case adequately. It is logical that meaningful access can best be obtained by a pro se litigant who knows the merits of the case together with the legal knowledge of assistance of counsel in a complex litigation.

The Third Circuit has found that pro se representation is tangentially related to procuring a fair trial. "Right to proceed pro se derives from belief that respect for human dignity is best served by respect for individual freedom of choice." Soto v. U.S., 369 F.Supp. 232 (emphasis added). Yet, the District Courts are violating civil litigants

Freedom of Choice. To associate with counsel of choice, to associate by assistance of counsel, to express one's self by taking part in the court process with counsel and to petition the government is denied by the lower courts' rulings that petitioners may not have assistance of counsel. As the matter stands now, law is being fashioned by the lower courts which shall not just chill, but strike coldly at the previously constitutionally-protected First Amendment rights of all whistleblowers and justice-minded victims of illegal use of state power. These rulings have murderous effects upon whistleblowers -- upon civil litigants.

The First Amendment is a fundamental, prefefred freedom. Liberty of contract has become an established part of the due process clause, and the Court should apply it when a statute or rule is held to interfere with a fundamental liberty interest. As held in Lochner v. New York, "meddlesome interferences with the right of the individual" which infringe on the "liberty of contract"

between employer and employee does not safeguard the public. "The states have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operations of the Constitutional laws enacted by Congress." McCulloch v. Maryland, 1819. The Civil Procedure Rules invoked by the lower court has now had the effect of interfering with all of these Constitutional rights. This is not an appeal of the court's inherent power to manage a case, but rather whether invoking civil procedure rules, as interpreted by the District Court, violates a litigant's rights. To most efficiently and justly access the courts is the goal; however, one cannot and should not forego any right while seeking to redress some of the very same Constitutional rights.

Can the Courts deprive a pro se litigant of assistance of counsel?

There is no compelling reason to set aside pro se right to assistance of counsel. The Constitution does not require such an

attack upon First, Fifth and Fourteenth Amendment rights; no higher purpose has arisen in the United States than to uphold the Constitution of the United States. Petitioners seek to nurish that still flowering gift. It is tragically ironic that the lower courts have moved (through error, we contend) to take from the citizens one of its greatest gifts - the First Amendment.

Since Congress is forbidden to silence First Amendment rights, should the lower Federal Courts be permitted to do so? Petitioners assert that no law permits judges to violate petitioners' right to assistance of counsel and no political convenience justifies such a Constitutional intrusion.

As Justice Stevens stated in Walters v. National Association of Radiation Survivors, 473 US 305, 368-371:

> What is at stake is the right of an individual to consult an attorney of his choice in connection with a controversy with the Government. In my opinion that right is firmly protected by the Due Process Clause of the Fifth Amendment and by the First Amendment.

> The fundamental error ... is (the) assumption that the individual's right to employ counsel of his choice in a contest with his sovereign is a kind of second-class interest that can be assigned a material value and balanced on a utilitarian scale of costs and benefits.

Justice Stevens went on to state:

> We are concerned with the individual's right to spend his own money to obtain the advice and assistance of independent counsel in advancing his claim against the Government. In all criminal proceedings, that right is expressly protected by the Sixth Amendment. As I have indicated, in civil disputes with the Government I believe that right is also protected by the Due Process Clause of the Fifth Amendment and by the First Amendment. If the Government, in the guise of a paternalistic interest in protecting the citizen from his own improvidence, can deny him access to independent counsel of his choice, it can change the character of our free society. ...the citizen's right of access to the independent, private bar is itself an aspect of liberty that is of critical importance in our democracy. ... In my view, regardless of the nature of the dispute between the sovereign and the citizen ... the citizen's right to consult an independent lawyer and to retain that lawyer to speak on his or her behalf is an aspect of liberty that is priceless.

As previously mentioned, this matter also revolves around a federal statute: 28 U.S.C A. 1654, which has evolved from the

Judicial Code, Section 272. Judicial Code §272 provided for access to the courts in three succinctly different modes. They are (1) Parties conducting their own causes personally; (2) by the assistance of counsel;[1] or (3) by attorney-at-law.

The 1911 Revision and Codification of the Laws made no amendment to Judicial Code, Section 272, which became Section 394 in the 1940 Edition of the United States Code. See Senate Document No. 848 of the 61st Congress, 3d Session.

28 U.S.C. 394 reads as follows:

> In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

However, 28 U.S.C.A. 1654, which is based on the above referenced 28 U.S.C. 394,

[1]Note: The reference in the Constitution regarding counsel also utilizes the phraseology, "assistance of counsel." The definition of "assistance" as found in Webster's Seventh New Collegiate Dictionary is: "the act of assisting or the aid supplied: support."

1940 Edition, reads substantially different than the original Judicial Code. Yet, the only intended changes to Section 1654 were made in 1948 and 1949, neither of which showed a change in the avenues accessible to litigants to approach the courts.

Specifically, the words, "as, by the rules of the said courts respectively, are permitted to manage and conduct causes therein," were omitted as surplusage by the 80th Congress and then restored by the 81st Congress. See Section 91 of Senate Report No. 303, April 26, 1949).

These were the only changes ever made to this section of the Code. Pro Se petitioners hasten to add that these "avenues" are First, Fifth, Sixth and Fourteenth Amendment rights as to their approach to the court and conduct therein.

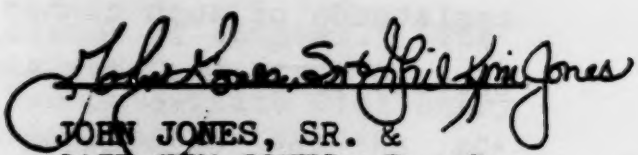
Thus, the important words, "or by the assistance of such counsel" were omitted between printings of Section 1654 and Section 394, but the legislative history indicates no actual intention to omit same.

CONCLUSION

This appeal arises from Orders restricting a litigants' right to counsel, which then brings into question the fairness of the civil proceeding, the denial of meaningful access to the courts, the interference with the general principles of agency law and the fundamental Constitutional right to associate (with counsel), as well as the exercise of First Amendment rights by litigants in the court process, the guarantees of due process and equal protection of the laws, effective use of counsel, and the courts' respect for individual freedom of choice.

For the above and foregoing reasons, petitioners respectfully submit that the Petition for Writ of Certiorari in this case should be granted.

Respectfully submitted,



JOHN JONES, SR. &
GAIL KIM JONES, Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

JOHN JONES, SR. and
GAIL KIM JONES, his wife,

Petitioners,

versus

BOROUGH OF MORRISVILLE, ET AL.

Respondents.

A N D

JOHN JONES, SR. and
GAIL KIM JONES, his wife,

Petitioners,

versus

PRINCETON UNIVERSITY, ET AL.

Respondents.

PETITION FOR WRIT OF CERTIORARI

AFFIDAVIT OF SERVICE

JOHN JONES, SR. and GAIL KIM JONES do hereby state that forty (40) copies of the attached Petition for Writ of Certiorari was filed with the United States Supreme Court Clerk's Office, and that a true and correct copy has been served upon the following:

(1) Joseph Goldberg, Esq.
1315 Walnut St., 4th Fl.
Philadelphia, PA 19107
(2) Anita Alberts, Esq.
102 N. Main St.
Doylestown, PA 18901
(3) Edward R. Carpenter, Esq.
1515 Locust St.
Philadelphia, PA 19102
(4) William C. McGovern, Esq.
1800 JFK Blvd.
Philadelphia, PA 19103
(5) Marc I. Rickles, Esq.
234 South State St.
Newtown, PA 18940
(6) Michael Spero, Esq.
228 Alexander St., PO Box 2329
Princeton, NJ 08450
(7) Richard A. Amdur, Esq.
1 Industrial Way
W. Eatontown, NJ 07724
(8) Solicitor General
Department of Justice
Washington, D.C. 20530

this 6th day of January, 1988, by depositing same in a United States post office, with first-class postage prepaid, and properly addressed to the Court and each party.

Signed,

JOHN JONES, SR.
GAIL KIM JONES
Petitioners, Pro Se

Sworn and Subscribed to
this 5th day of January, 1988

Notary Public

SHIRLEY L. IALA, Notary Public of Pennsylvania
Bristol Twp., Bucks County
My commission expires August 18, 1989

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOHN JONES, SR. and GAIL KIM JONES : C.A. Misc. No. 87-8031

vs. :

BOROUGH OF MORRISVILLE, ET AL. : D.C. Civ. No. 85-1859

Present: SEITZ, GREENBERG and HUNTER, CIRCUIT JUDGES

Submitted are:

(1) Petitioners' John Jones, Sr. and Gail Kim Jones, petition for permission to appeal pursuant to 28 U.S.C. 1292(b); and

(2) Answer of respondents, Falls Township and Ray Nearhood, to plaintiff's petition for permission to appeal in the above-captioned case.

Respectfully,

Clerk

SM/DLW/dmg
enc.

The foregoing motion for permission to appeal is denied.

By the Court,

/s/ SEITZ, Circuit Judge

Dated: Sep. 15, 1987

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-8031

JOHN JONES, SR. and
GAIL KIM JONES, his wife,

Appellants

V.

BOROUGH OF MORRISVILLE,
ET AL.

(Civil Action No. 85-1859 - E.D.Pa.)

SUR PETITION FOR REHEARING

PRESENT: GIBBONS, Chief Judge, SEITZ, WEIS, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, and SCIRICA, Circuit Judges.

The petition for rehearing filed by appellants in the above captioned matter having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit

in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:

/s/ SEITZ, Circuit Judge

DATED: Oct. 13, 1987

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOHN JONES, SR. and GAIL KIM JONES : C.A.NO. 87-5548

VS. :

PRINCETON UNIVERSITY et al. : D.N.J. Civ. No. 84-4528

PRESENT: SLOVITER, BECKER, and MANSMANN, CIRCUIT JUDGES

Submitted by the Clerk are:

1) the above-captioned appeal for dismissal due to a jurisdictional defect; and

2) appellant's response to listing for dismissal in the above-captioned case.

Respectfully,

Clerk

SM/mc
encl.

The foregoing appeal is dismissed because

taken from a non-appealable order.

By the Court,

/s/SLOVITER, Circuit Judge

Dated: 9/14/81

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-5548

JOHN JONES, SR. and
GAIL KIM JONES, his wife,

Appellants

V.

PRINCETON UNIVERSITY, et al.

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Judge, SEITZ, WEIS HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG and SCIRICA, Circuit Judges

The petition for rehearing filed by Appellants, JOHN JONES, SR. and GAIL KIM JONES, his wife in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the

petition for rehearing is denied.

By the Court,

/s/SLOVITER, Judge

Dated: October 8, 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN JONES, SR. and GAIL KIM JONES, his wife,	:	CIVIL ACTION
v.	:	
BORCUGH OF MORRISVILLE, et al	:	NO. 8501859

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, J. MAY 5, 1987

Plaintiffs move to certify for appeal this court's ruling that a lawyer may not represent the non-lawyer plaintiffs or act as "co-counsel" at court-ordered depositions in this civil action when he refuses or is not permitted to enter his appearance for plaintiffs who wish to act pro se at other court appearances.

On January 28, 1987 and on February 19, 1987, this court ruled that plaintiffs John Jones, Sr. and his wife Gail Kim Jones may appear pro se at court-ordered depositions, or may have an attorney represent them, but thatonce the attorney enters his appearance by representing plaintiffs at depositions,

that attorney represents the plaintiffs generally in the case until a new lawyer enters an appearance or the court grants that attorney leave to withdraw. See Local Rule 18(a), 18(c). The court decided that the plaintiffs cannot use an attorney at times and appear pro se at others as they choose. The court also refused to allow the attorney to act as "co-counsel" with plaintiffs at the depositions. The court, exercising its discretion and inherent power to manage a case under Fed. R.Civ.P. 16, declined to allow this type of representation because in the circumstances of this case evidenced on the record to date, the court has determined that it was confusing and unfair to defendants and would complicate not only the taking of the depositions but the proper management of the case and its eventual termination. The court also stated that the plaintiffs could not be "co-counsel" with a lawyer because the plaintiffs are not lawyers. The court intended no ruling on whether plaintiffs

might personally address the jury at trial even if represented by counsel.[1]

Plaintiffs made an oral motion to appeal this decision; the court stayed the depositions and granted defendants until March 5, 1987 to oppose the motion. Because the issue whether the court, by applying Local Rule 18(a) and 18(c) has denied Mr. and Mrs. Jones any constitutional right to hire or use counsel raises an important question as to the fairness of the proceedings and determination of this issue will materially advance the ultimate termination of the suit, the court will certify an interlocutory appeal of its order under 28 U.S.C. 1292(b).

Defendant Jeffrey Williams, opposing plaintiffs' motion,[2] argued that the plaintiffs asked this court to certify this question for appeal to delay further the taking of plaintiffs' depositions. To understand this

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[1]A copy of the transcript of the relevant portions of the January 28, 1987 and February 19, 1987 proceedings are attached hereto and incorporated herein.

argument, it is necessary to review the long procedural history of this case, a case over two years old, in which no depositions have yet been taken.

John Jones, Sr., acting pro se, filed a complaint April 3, 1985, alleging, inter alia, that various state courts, district attorneys, and police departments were violating his constitutional rights by threatening to arrest him, illegally searching his home, interfering with his alleged right to tape record police conduct, and withholding city services from him and his wife. After granting a number of defendants' motions to dismiss, the court gave plaintiff Mr. Jones leave to file an amended

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[2]Defendant Jeffrey Williams opposed plaintiffs' motion; defendants Borough of Morrisville, Harry Merker, William Potashnick, James Armstrong, Thomas Herron, and Eugene Gaydula filed a response seeking leave to file "rule 12(b)(6), rule 41(b), and rule 56 motions," but did not address directly whether this court should grant or deny plaintiffs' motion for certification. Defendants Lee Rockafellow, John Hofmann, Ray Nearhood, James Kettler, Nicolas Striluk, Charles Ronaldo, Armando Fralliccardi, Falls Township, John Kutalek, Francis Johns, David Clark, William Cosgrove and Charles Schaffner did not oppose the motion.

complaint on or before August 12, 1985. After Mr. Jones filed the amended complaint, defendant Falls Township Police Department filed a motion to dismiss; following a conference held August 27, 1985, the court granted defendant's motion and gave plaintiff leave to file a second amended complaint within ten days. At this point, Mr. Jones engaged a New Jersey attorney, James G. Podlas, Esquire. After receiving a letter from attorney Podlas dated September 3, 1985, the court granted leave to file the second amended complaint on or before September 20, 1985. On September 20, 1985, Podlas filed a second amended complaint on behalf of two plaintiffs, Mr. and Mrs. Jones; under Local Rule 18(a), Podlas entered his appearance on September 20, 1985 and the court admitted Podlas pro hac vice on October 31, 1985.

Various defendants filed motions to dismiss the second amended complaint; after oral argument held January 17, 1986, the court granted all outstanding motions to

dismiss and granted plaintiffs leave to file a third amended complaint on or before February 17, 1986. At Podlas' request, the court allowed plaintiffs until March 17, 1986 to file a third amended complaint.

On March 12, 1986, Mr. and Mrs. Jones discharged Podlas as their attorney; on March 17, 1986, Podlas filed a motion for mandatoryy withdrawal under Local Rule 18(c) on March 18, 1986, plaintiffs, acting pro se filed a motion for extension of time to file the third amended complaint. Defendant Falls Township Police Department opposed the motion for an extension of time; on March 31, 1986, the court granted Podlas leave to withdraw as plaintiffs' attorney and on April 1, 1986, the court allowed plaintiffs to file the third amended complaint on or before May 1, 1986. In the April 1, 1986 Order, the court ordered that no further extensions of time would be granted even if plaintiffs obtained new counsel, cautioned that the action might be dismissed for lack of prosecution and warned the plaintiffs

that the court would not entertain ex parte telephone calls. Plaintiffs filed their pro se third amended complaint on May 1, 1986.

After a status conference held May 28, 1986, the court ordered the parties to complete discovery on or before August 29, 1986. On June 10, 1986, for the reasons stated on the record May 28, 1986, the court dismissed plaintiffs' state law claims against defendant Falls Township and denied defendant Williams' motion to dismiss. The court, granting plaintiffs' motion for extension of time for discovery, extended discovery until October 29, 1986. In its October 1, 1986 Order, the court ordered depositions of the plaintiffs and eleven other individuals to begin October 6, 1986 and proceed on successive days; a status conference was scheduled for October 31, 1986.

Plaintiffs then moved to stay all proceedings for four months "for medical reasons"; plaintiffs supported their motion with a statement by Donald Soeken, Ph.D.

Dr. Soeken stated in a letter that "Mr. and Mrs. Jones are in a severe psychological crisis," and that he had advised them not to participate in any court matters until January, 1987 to alleviate stress. Defendants filed a joint motion to deny plaintiffs' request for a stay. Following a conference call on October 3, 1986, the court ordered that the case be placed in suspense for sixty days but stated that Dr. Soekens letter was,

> "vague, does not give any diagnosis of any specific condition necessitating a four-month stay of this litigation, does not state when Dr. Soeken met with or examined the plaintiffs, and does not adequately state Dr. Soeken's education or experience; and (that)
>
> Plaintiffs' desire to avoid this court matter, all court matters, and/or confrontations during the Christmas holiday season is insufficient justification to stay this litigation for four months; where the defendants have a legitimate and substantial interest in achieving a prompt disposition, litigation cannot be indefinitely or unreasonably delayed."

The court then ordered an evidentiary hearing for December 4, 1986 to determine whether the case should remain in suspense because

of plaintiffs' alleged medical condition. Plaintiffs attempted to appeal this interlocutory order; the Court of Appeals dismissed for lack of jurisdiction.

After a two-day hearing on December 4 and 5, 1986, this court entered an Order on December 9, 1986 that removed the case from suspense, denied plaintiffs' oral motion for an additional six-month stay of the proceedings, rescheduled the court-ordered depositions[3] to begin December 17, 1986, and required leave of court to file additional motions.

On December 16, 1986, Mrs. Jones informed the court that Mr. Jones had been hospitalized for emergency surgery. After a conference call with defense attorneys,[4] the court ordered the case placed in suspense

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[3]On December 17, 1986, plaintiffs submitted a list of fourteen people they wanted to depose and the proposed order in which they sought to depose them. The court scheduled the deposition of plaintiffs for December 17 and 18, 1986. The court ordered that the 14 depositions plaintiffs requested be held on January 6, 16, 20, 27, 1987.

until January 28, 1987 to allow Mr. Jones to recover from surgery; the depositions scheduled to begin December 17, 1986, were also postponed.

At the January 28, 1987 status conference, at which Mr. Jones was present and admitted he was in improved health, the court ordered the case removed from suspense, ordered defendants to respond to outstanding interrogatories, and rescheduled the depositions to begin February 19, 1987. When discussing rescheduling, plaintiffs stated that they wanted to act as "co-counsel" at the depositions with Theodore M. Kravitz, Esquire, an attorney who was then present. Mr. Jones stated that he had paid Mr. Kravitz but would not allow Mr. Kravitz to explain whether he had been hired to represent the plaintiffs. Mr. Kravitz was informed that he might enter his appearance and attend the depositions or

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[4]The court attempted but could not reach Mr. and Mrs. Jones before this conference call. Because Mrs. Jones stated that her husband's medical condition was an emergency, the court decided to speak ex parte with defense lawyers. The call was recorded by a court stenographer.

he might decline to enter his appearance in which case he could not represent the plaintiffs at the depositions; the court refused to allow Mr. Kravitz to enter a "special appearance" to represent the plaintiffs at the depositions only.

The court explained to the plaintiffs that Mr. Kravitz's professional relationship with them was relevant because the court would hold pro se plaintiffs to somewhat less stringent standards than lawyers. Ross v. Meagan, 638 F.2d 646, 650 (3d Cir. 1981), citing Haines v. Kerner, 404 U.S. 519 (1972). Attorney Kravitz's professional relationship to plaintiffs was and is relevant because defendants were entitled to know whether pleadings, motions, and other papers were to be served on plaintiffs directly or on their attorney. Confusion as to whether Mr. Kravitz is, in fact, representing the plaintiffs not only might hamper defendants' ability to defend but also might subject them to the risk of accusations of unethical conduct. The court also had an obligation to ascertain

whether Mr. Kravitz declined to enter an appearance in order to avoid his professional responsibilities under Fed.R.Civ.P. 11. Applying the Local Rules and this court's inherent power to manage a case under Fed.R. Civ.P. 16, the court denied the plaintiffs' request to act as "co-counsel" with an attorney or be represented by an attorney only at the depositions or such other occasions as they choose.

On the morning of February 19, 1987, the plaintiffs refused to proceed with the depositions on the terms and conditions announced by the court on January 28, 1987 and incorporated in its February 10, 1987 Order. Plaintiffs orally presented a "motion for certification to appeal to 3rd Circuit Court of Appeals" (sic); however, plaintiffs failed to request leave of court before filing this motion. At the hearing held February 19, 1987, plaintiffs repeated their argument that the court wasunconstitutionally precluding plaintiffs from representation by a lawyer.

Mr. and Mrs. Jones assert that they have a First Amendment and Sixth Amendment right to counsel and the right "to allow pro se counsel to hire and use co-counsel." This is a civil action; the Sixth Amendment to the United States Constitution guarantees the right to counsel in criminal cases or cases where the person is threatened by government with loss of personal freedom, so the Sixth Amendment is inapplicable. See, e.g., Lassiter v. Department of Social Services, 452 U.S. 18, 25 (1981). However, if the plaintiffs' motion is liberally interpreted, see Ross, 638 F.2d at 650, plaintiffs might be alleging an infringement of a First Amendment right to associate with counsel or meaningful access to the courts, or arguing that procedural due process requires that a plaintiff in a §1983 civil suit be allowed to spend his own money to obtain advice of counsel and utlize the lawyer in court on his own terms. Cf. Walters v. National Association of Radiation Survivors, 473 U.S. 305, 368 (Stevens,J., dissenting) (right to

counsel in civil disputes with the government may be protected by the due process clause and by the First Amendment.)

In support of the argument that the motion for certification is yet one more delaying tactic by plaintiffs, defendants cite plaintiffs' alleged failure to appeal from the Honorable Robert Cowen's decision refusing to allow Mr. Kravitz to represent Mr. Jones at depositions in a case pending before the United States District Court for the District of New Jersey. However, this court does not know the facts of that case or the reasons for Judge Cowen's decision or Mr. Jones' response thereto. This court's decision must be based on this record.

An order disqualifying counsel in a civil case is a nonappealable interlocutory order. Richardson-Merrell, Inc. v. Koller 472 U.S. 424 (1985); an order denying counsel in a civil case is also a nonappealable interlocutory order. Smith-Bey v. Petsock, 741 F.2d 22 (3d Cir. 1984). However, both Richardson-Merrell and Smith-Bey address

appellate jurisdiction under 28 U.S.C. 1291 and the collateral order rule, not whether a district court may certify such an order under 28 U.S.C. 1292(b).

Under 28 U.S.C. 1292(b), this court may certify an otherwise unappealable interlocutory order if "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation...."

A challenge alleging that the court is denying plaintiffs a constitutional right to counsel in a civil suit brings into question the fairness of the proceedings and is a controlling question of law. "A controlling question of law must encompass at the very least every order which, if erroneous, would be reversible error on final appeal." Katz v. Carte Blanche Corp., 496 F.2d 747, 755 (3d Cir.), cert. denied, 419 U.S. 885 (1974) Although certain constitutional errors may be harmless error, an error restricting the

right to counsel and bringing into question the fairness of the civil proceeding may be reversible error.

In a criminal matter, a non-lawyer defendant has a constitutional right under certain circumstances to act as "co-counsel" with a defense attorney, or to have an attorney represent the defendant in some, but not all, criminal proceedings. See McKaskle v. Wiggins, 465 U.S. 168 (1984); see generally 21A Am.Jur.2d Criminal Law §767 (1981)(Supp. 1986), and cases cited therein. But this right is grounded in the Sixth Amendment right to counsel in criminal matters; there is substantial ground for difference of opinion if these same practices should be, or constitutionally must be, extended on behalf of a pro se plaintiff in a §1983 civil suit.

Determining whether the plaintiffs may use counsel to represent them in depositions, but still proceed pro se before the court at conferences and hearings, in other pre-trial

discovery proceedings, and at trial will materially advance the ultimate termination of the litigation. It is in the interests of the administration of justice to allow the Court of Appeals to decide this question at this time in order to avoid a new trial if on subsequent appeal it is determined that this court denied plaintiffs' right to counsel or fair trial. In addition, case management will be eased once this continuing objection is resolved and will enable the eventual termination of a case filed in April, 1985 in which depositions have not yet begun.

The question certified by the district court should be sufficiently distinct from the merits of the suit so as not to encourage "piecemeal" appellate review and should implicate special factors that take the order outside the general rule against accepting appeals from orders grounded in the discretionary power of the district court. See, e.g, Link v. Mercedes Benz of North America, 550 F.2d 860, 862-63 (3d Cir.), cert. denied,

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431 U.S. 933 (1977); Katz, 496 F.2d at 755-756. In Katz, the Court of Appeals, reviewing the legislative history of 28 U.S.C. 1292(b), stated that the policies underlying the statute include avoiding harm to a party pendente lite, waste of district court resources and expense to litigants. Katz, 496 F.2d at 755-756. This court's Order is sufficiently distinct from the merits of plaintiffs' allegations so that certification satisfies the policies identified in Katz as underlying 28 U.S.C. 1292(b).

One reason the courts in the civil cases of Smith-Bey and Richardson-Merrell declined appellate jurisdiction over interlocutory orders denying or disqualifying counsel was because a new trial was available to redress erroneous denial or disqualification of counsel by the district court. Smith-Bey, 741 F.2d at 25; Richardson-Merrell, 472 U.S. at 433-436. The added expense of a new trial in those cases was not considered a justification for exception to the final judgment rule. The court has considered the reasoning

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of these cases under 28 U.S.C. 1291 in determing whether to certify this order as appealable. But here, Mr. and Mrs. Jones raise an additional issue of the constitutional application of Local Rule 18(a) and 18(c). One judge of the court has no power to "waive" application of the Local Rules in one case. This provides an additional factor enabling this court's Order to meet the standard for certification under 28 U.S.C. 1292(b) and Third Circuit case law: the Order involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from the Order may materially advance the ultimate termination of the litigation.

Because the plaintiffs proceed pro se, the court alerts them to the jurisdictional requirement in 28 U.S.C. 1292(b); if plaintiffs wish to appeal, they now must apply to the Court of Appeals for the Third Circuit within ten (10) days from the entry of the accompanying Order and request that the Court of Appeals exercise its discretion

and permit appeal of the Order. See Atkins v. Scott, 597 F.2d 872, 879 (4th Cir. 1979).

Appropriate Orders follow.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN JONES, SR. and GAIL KIM JONES, his wife,	:	CIVIL ACTION
v.	:	
BOROUGH OF MORRISVILLE, et al	:	NO. 85-1859

ORDER

AND NOW, this 5th day of May, 1987, upon consideration of plaintiffs' January 28, 1987, and February 19, 1987 requests to be represented by an attorney at court-ordered depositions but not represented by an attorney in other proceedings, or, in the alternative, to have an attorney act as "co-counsel" in other proceedings, and defendants' objections thereto, it is ORDERED that:

1. Plaintiffs' request to be represented by an attorney at certain court-ordered depositions but not in other proceedings is DENIED.

Under Local Rule 18(a) and 18(c) and this court's inherent power to manage the case under Fed.R.Civ.P. 16, it would not be in the interests of the administration of justice to allow plaintiffs' request.

2. Plaintiffs' request to have an attorney act as "co-counsel" at some but not at other proceedings at their choice is DENIED. In a civil case, a non-lawyer cannot be "co-counsel" with a lawyer. Under Local Rule 18(a) and 18(c) and this court's inherent power to manage the case under Fed.R.Civ.P. 16, it would not be in the interests of the administration of justice to allow plaintiffs' request.

3. The proceedings in the district court are STAYED ten (10) days to permit an appeal of this Order.

/s/NORMA L. SHAPIRO
J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN JONES, SR. and GAIL KIM JONES, his wife,	:	CIVIL ACTION
v.	:	
BOROUGH OF MORRISVILLE, et al.	:	NO. 85-1859

ORDER

AND NOW, this 5th day of May, 1987, upon consideration of plaintiffs' "motion for certification to appeal to 3rd Circuit Court of Appeals" (sic), defendants' opposition thereto, and for the reasons stated on the record on January 28, 1987 and February 19, 1987 and in this court's Memorandum and Order dated May 5, 1987, it is ORDERED that:

1. Plaintiffs' motion for certification pursuant to 28 U.S.C. 1292(b) is GRANTED. The rulings made at the January 28, 1987 and February 19, 1987 proceedings and incorporated in this court's May 5, 1987 Memorandum and Order involve a controlling question of law as to which there is substantial ground for

difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation.

2. The question certified is:

> Whether in a civil suit the district court erred by applying Local Rule 18(a) and 18(c) and declining to allow a lawyer to represent non-lawyer plaintiffs or to act as "co-counsel" with plaintiffs during certain but not all depositions, where plaintiffs will not permit thelawyer to enter an appearance and choose to appear pro se in other aspects of the suit?

/s/NORMA L. SHAPIRO
J.

No. 87-1204

Supreme Court, U.S.
FILED
FEB 8 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1987

JOHN JONES, SR. AND
GAIL KIM JONES, his wife,

Petitioners,

-vs-

PRINCETON UNIVERSITY, TRUSTEES OF PRINCETON UNIVERSITY, PRINCETON PLASMA PHYSICS LABORATORY, PRINCETON UNIVERSITY SECURITY DIVISION, OFFICER WATSON AND OFFICER TRANI, individually and as Agents of Princeton University and Princeton University Security Division, PLAINSBORO POLICE DEPARTMENT, SERGEANT MICHAEL DONAHUE AND OFFICER ROBERT LASKO, individually and as Agents of Plainsboro Police Department,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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QUESTIONS PRESENTED

1) Does the United States Supreme Court have jurisdiction to grant a Writ of Certiorari in this matter?

2) Have these *pro se* litigants in this action been deprived of a statutory or constitutional right to "assistance of counsel"?

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No. 87-1204

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

JOHN JONES, SR. *et ux.*
Petitioners,

vs.

PRINCETON UNIVERSITY, *et al.*
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

OPINIONS BELOW

The Order of the United States District Court, District of New Jersey entered on July 8, 1987 by the Honorable Robert E. Cowen is attached hereto as 1a.

The Order of the United States Court of Appeals, for the Third Circuit, dismissing petitioners' appeal, dated September 3, 1987, is located in petitioners' appendix at page A4.

The Order of the United States Court of Appeals, for the Third Circuit, denying petitioners' Petition for Rehearing and Suggestion for Rehearing en banc, dated October 8, 1987 is located in petitioner's appendix at pages A5-A6.

STATEMENT OF JURISDICTION

The United States Supreme Court lacks jurisdiction in this matter. The statutes on which petitioners rely to invoke jurisdiction, 28 U.S.C. §1254 (1) and 28 U.S.C. §2403 (a) are inapplicable.

28 U.S.C. §1254 (1) provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (Emphasis supplied)

In *United States v. Nixon*, 418 U.S. 683, 41 L.Ed. 2d 1039, 94 S.Ct. 3090 (1974) this Court specified that a case is "in" the Court of Appeals if (a) the appeal to the Court of Appeals was timely filed; (b) all other procedural requirements were met; and (c) the District Court's order from which the appeal was taken was "final" within the meaning of 28 U.S.C. §1291. Under 28 U.S.C. § 1291 the courts of appeals have jurisdiction of appeals from only "final decisions" of the district courts of the United States. *Bachowski v. Usery*, 545 F.2d 363 (3rd Cir. 1976); *Arthur Anderson & Co. v. Finesilver*, 546 F.2d 338 (10th Cir. 1976), *cert. den.* 429 U.S. 1096, 51 L.Ed. 2d 543, 97 *S. Ct.* 1113; *United States v. Haley*, 541 F.2d 678 (8th Cir. 1974).

The Order located in petitioner's appendix at page A4 of this appendix indicates that petitioner's appeal was clearly not taken from a "final" order of the District Court. The appeal was taken from the District Court's partial summary judgment order and in fact was dismissed by the Court of Appeals because "taken from a non-appealable order." Since petitioners appeal was not taken from a "final" order of the District Court and

was subsequently dismissed, this case was never "in" the court of appeals within the meaning of 28 U.S.C. §1254 and therefore the United States Supreme Court should not issue a writ of certiorari.

28 U.S.C. §2403(a) is also inapplicable to petitioners. That statute provides:

> (a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

There is no Act of Congress affecting the public interest, the constitutionality of which is drawn into question, involved in this case. Further, as petitioners acknowledge in their Petition (Petitioners' brief, p. 4) neither the District Court nor Court of Appeals has certified any constitutional challenge to the United States Attorney General.

Finally, the questions presented by petitioners were never raised nor addressed by either the District Court or the Third Circuit Court of Appeals.

STATUTES INVOLVED

The statutes involved are:

1) 28 U.S.C. § 1254 (1), which provides:

Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

2) 28 U.S.C. § 2403(a), which provides:

Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

3) 28 U.S.C. § 1654, which provides:

Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

UNITED STATES SUPREME COURT RULES INVOLVED

The United States Supreme Court Rules involved are:

1) Rule 17, which provides:

Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, which neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

2) Rule 21.5, which provides:

Rule 21. The petition for certiorari

.5. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

STATEMENT OF THE CASE

Essential to a just disposition of the petition for writ of certiorari is a complete understanding of the procedural and factual background behind this litigation.

This matter arises from petitioner's institution of a law suit against Princeton University, Trustees of Princeton University, Princeton University Plasma Physics Laboratory, Princeton University Security Division, Officer Watson and Officer Trani, individually and as agents of Princeton University and Princeton University Security Division (hereinafter the "Princeton University defendants"), The United States Department of Energy, Plainsboro Township Police Department, including Sergeant Michael Donahue and Officer Robert Lasko. Petitioner, John Jones, Sr., was hired by Princeton University's Plasma Physics Laboratory as an instrument maker. He was an at-will employee. Petitioners seek damages for the alleged wrongful termination of John Jones, Sr.'s employment by Princeton University, for alleged defamation, and for alleged invasion of constitutionally protected rights. Petitioner Gail Kim Jones sues derivatively for loss of consortium. She also advances a theory of recovery which alleges that she will be subjected to speculation, ridicule and scorn because of the alleged malicious acts of the defendants towards her husband.

On or about October 31, 1984, petitioners filed their Complaint in the Clerk's Office of the United States District Court for the District of New Jersey.

On March 15, 1985, Princeton University obtained a Clerk's Order extending the time to answer for fifteen (15) days, through and including April 2, 1985 and on April 2, 1985, Princeton University filed its Answer to Complaint and Separate Defenses.

On July 15, 1985, an Order granting summary judgment in favor of the defendant United States Department of Energy, was filed. On that same date, an Order denying without prejudice the motion of the

Princeton University defendants to dismiss Counts 8 and 9 of the Complaint alleging wrongful discharge and emotional distress, dismissing Counts 4 and 5 of the Complaint alleging defamation under State law and dismissing all claims against defendant, Dr. William G. Bowen, was filed by Judge Barry, U.S.D.J..

Because the petitioners failed to appear for depositions it was necessary to file a motion on November 6, 1985 to compel depositions. This motion was granted by United States Magistrate Devine and filed on January 17, 1986. Petitioners had refused to be deposed without tape recording the deposition and on April 23, 1986 an Order was signed by the Honorable Robert E. Cowen, U.S.D.J. denying 1) petitioners' application to tape record; 2) petitioners' application to recuse Magistrate Devine, 3) petitioners' application to have their former attorney turn over documents (the prior attorney never having received notice of petitioner's application; and 4) petitioner's application for a stay. (3a) On May 22, 1986, petitioners filed a Notice of Appeal to the United States Court of Appeals, Third Circuit seeking interlocutory relief (CA No. 5357). The Appeal was dismissed on August 28, 1986.

On September 4, 1986, petitioners filed an emergency motion for a stay of proceedings which was denied by Judge Cowen. Petitioners thereafter filed another Notice of Appeal to the United States Court of Appeals, Third Circuit (CA No. 86-5826), which was dismissed on December 31, 1986 for failure to timely prosecute.

On or about October 31, 1986, petitioners filed an Emergency Motion on Short Notice/Petition for Writ of Mandamus with the United States Court of Appeals, Third Circuit (CA No. 86-3709), which was denied on December 31, 1986.

On or about November 6, 1986, petitioners were ordered to appear for depositions to be conducted at the United States District Courthouse commencing November 24, 1986. On or around November 20, 1986

petitioners filed a Notice of Appeal which was dismissed on December 30, 1986 due to a jurisdictional defect (CA No. 86-5785). The depositions of the petitioners were conducted in Judge Cowen's jury room on November 24, 25, 26, and December 1, 1986.

On or about March 17, 1987, petitioners filed a motion to 1) compel all defendants to answer interrogatories and produce documents; 2) require petitioner's prior counsel to turn over documents allegedly belonging to them; and 3) amend their complaint to add Michael A. Spero, Esq. as defendant. After reviewing the moving papers, the papers in opposition submitted by the Princeton University defendants, and noting that petitioner's prior counsel was not a party and that the Princeton University defendants had provided interrogatory answers and produced the requested documents. Magistrate Devine denied this motion on April 16, 1987.

Petitioners also filed a motion returnable May 18, 1987 to tape record depositions pursuant to F.R.C.P. 30 (b) (4). This motion was denied on May 26, 1987 by Judge Cowen.

On June 3, 1987 the Princeton University defendants filed a motion for summary judgment in the United States District Court, which was argued on June 24, 1987. On July 8, 1987 Judge Cowen granted partial summary judgment in favor of the Princeton University defendants dismissing the First Count, paragraph 20(b), 20(d), 20(e), of the Complaint.(1a).

On August 7, 1987 petitioners filed a Notice of Appeal, appealing this Order. On September 3, 1987 the appeal was dismissed because it was taken from a non-appealable order (see petitioner's appendix at page A4). Petitioners then filed a Petition for Rehearing and Suggestion for Rehearing en Banc which was denied on October 8, 1987 (see petitioner's appendix at pages A5 and A6).

Petitioners now file a Petition for Writ of Certiorari to the United States Supreme Court.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. The Petition for Writ of Certiorari Should Be Denied Because the Court Lacks Jurisdiction.

Along with the arguments set forth in the jurisdictional section of this brief, the Court should deny the Petition for Writ of Certiorari because the criteria of *R.* 17 have not been met. *R.* 17 provides that the Court should exercise its discretionary power of review "only when there are special and important reasons therefor." *R.* 17.1.

R. 17.1(a)-(c) sets forth some factors which the Court deems characteristic of cases which are of sufficient importance to warrant Supreme Court review. None of these factors are applicable to this case.

Petitioners have appealed a partial grant of summary judgment in the District Court, which the Court of Appeals dismissed because taken from a non-appealable order. Clearly this is not a situation where a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. *R.* 17.1 (a).

Neither is this the situation where a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals, as this case was never in state court. *R.* 17.1(b). Nor is this the situation where a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. *R.* 17.1(c).

None of these reasons for granting certiorari, as stated in *R.* 17.1, exist in this case. Petitioners have in no way indicated any special or important reasons for granting certiorari review.

It is critical to note that the questions presented in petitioners' brief have never been raised by petitioners nor addressed by the District Court or Court of Appeals.

Additionally, *Rule* 21.5 is applicable here because petitioners have failed to present with accuracy and clarity any issues or arguments essential to an adequate understanding of the points requiring consideration. Petitioners attempt to raise issues not raised below, are confusing issues and are making pointless arguments which are delaying this litigation. Accordingly, this Court should deny the petition under *R.* 21.5.

II. These Pro Se Litigants In This Action Have Never Been Deprived of a Statutory or Constitutional Right to "Assistance of Counsel."

Petitioners argue that they have been denied their statutory and constitutional right to "assistance of counsel." Petitioners have never been denied any rights to assistance of counsel. Throughout this extended litigation United States District Court Judge Robert E. Cowen has repeatedly stated to petitioners that they may obtain counsel in this matter. Petitioners have chosen to proceed *pro se*. They are by no means indigent. Petitioner Gail Kim Jones is a full time police officer and petitioner John Jones, Sr. is an instrument maker. Petitioners certainly could choose to obtain legal counsel if they so desired. In fact, petitioners had been represented by New Jersey counsel Frances Hartman, Esq. for a period of time and thereafter discharged him as their attorney, preferring to proceed *pro se*.

Thereafter petitioners consulted with another attorney, Theodore Kravitz, Esq. but petitioners did not want him to enter an appearance. Judge Cowen

repeatedly gave petitioners the opportunity to have counsel enter an appearance on their behalf.

This issue was raised on November 26, 1986 during one of petitioner's motion, that the court provide petitioners with marshalls to pick them up at the bridge to enter New Jersey from Pennsylvania, among other requests. At that time, petitioners also requested that Mr. Kravitz attend the court-ordered depositions but not as attorney of record. Judge Cowen explained that petitioners could either proceed *pro se* or have an attorney enter an appearance.

There has been no denial of right to counsel here. There has been no denial of petitioners constitutional rights under the First, Fifth, Sixth and Fourteenth amendments. All parties are governed by 28 U.S.C. 1654, Appearance Personally or By Counsel. That statute provides:

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein. (Emphasis supplied).

Under this statute it is evident that parties may conduct their case personally or by counsel. The parties are given the choice, just as Judge Cowen repeatedly gave the choice to petitioners.

Petitioners argue that they have a right to "assistance" of counsel throughout this litigation, while at the same time proceeding *pro se*. The law is clear that a party in a civil action has absolutely no constitutional or other right to conduct his own case *pro se* and have aid of counsel to speak and argue for him at the same time. *Brasier v. Jeary*, 256 *F2d* 474 (8th Cir. 1958), *cert den'd.* 358 U.S. 867, 3 L.Ed.2d 99, 79 S.Ct. 97, *reh. den.* 358 U.S. 923, 3 L.Ed. 2d 242, 79 S.Ct. 286.

In *Brasier*, the Court squarely addressed the issue raised by petitioners. In *Brasier*, the United States Court of Appeals for the Eighth Circuit addressed the single question of whether a party to a civil suit may appear, *pro se* and insist on the right to be represented by counsel at the same time. The appellant had commenced a suit, signing the complaint "George H. Brasier, Plaintiff, *pro se*" and "J.A. Hayward, Resident Attorney." Before commencement of the trial the resident attorney moved to allow the plaintiff to assist counsel during the progress of the trial, which motion was denied.

The plaintiff appealed this decision and argued that 28 U.S.C. §1654 was indefinite, vague and violative of the essentials of 'due process of law' secured by the Fifth Amendment to the Federal Constitution. Plaintiff-appellant also contended that he possessed a fundamental right to appear in person in the federal courts and to ". . . conduct the prosecution of his own controversy with aid of associate counsel, and that Congress and the Judiciary do not have on scintilla of authority to deny that right and to do so, would be violative of 'due process of law.'" *Brasier*, 256 F.2d. at 475.

The Court held that §1654 was not vague and indefinite and that it clearly set forth that in all courts of the United States the parties have the right to plead and conduct their cases personally or by counsel and that such representation by counsel shall be in accordance with the rules of the courts. *Ibid.*

The Court also held that while there was no doubt that appellant possessed the right to appear in person and conduct the prosecution of his own case, he did not possess the fundamental right to also have the aid of counsel. *Id.* at p. 476. The Court reviewed the original statute from which 28 U.S.C. §1654 was derived and its history and concluded that litigants were to make their claims either in person or by an attorney. The Court stated "[t]he alternative appears to be very clear, justifying the conclusion that where a person elected to

appear by attorney, he waived the privilege of appearing for himself. . . . We find nothing in our research to justify appellant's assertion that he possesses the fundamental right to appear for himself personally and also be represented by counsel at the same time. Denial of the right to appear in both capacities is not, in our opinion, violative of 'due process of law' as secured by the Fifth Amendment." *Id.* at 477.

In making its decision the Court also noted that it is the power and responsibility of a federal judge in a jury trial to govern and control the conduct of the trial, quoting *Herron v. Southern Pacific Co.*, 1931, 283 U.S. 91, 95, 51 S.Ct. 383, 384, 75 L.Ed. 857. The Court stated that appellant's motion to be allowed to assist counsel and aid counsel was an effort by a party to a civil suit to have counsel represent him and to also have the unqualified right to interfere with the proceedings at any point he desired, to join in the arguments to court and jury, and to supplement his counsel's statements whenever he saw fit to do so. The Court stated that this comes clearly within the discretionary power of a trial judge to control and regulate the orderly procedure of the trial. *Brasier*, 256 F.2d. at 477. The Court stated:

> Even in criminal matters it has consistently been held that it was not error to deny a defendant's request that he be permitted to act as his own counsel at a time when he was represented by counsel of his choice. In the very recent case of *Egan v. Teets*, 9 Cir., 1957, 251 F.wd 571, 578-579, it was held that the trial court's denial of Egan's request that he be permitted to act as his own counsel at the same time that he was represented by counsel of his own choice did not deprive Egan of <u>any</u> federal constitutional right. (Emphasis supplied.) *Ibid.*

The Court in *Brasier* also relied upon *United States v. Foster*, D.C.N.Y., 9 F.R.D. 367, where Judge Medina

held that an accused has no right to be heard both in person and by attorney. In denying the request of one of the defendants to be allowed to discharge his attorney (held to be mere subterfuge and not in good faith) and argue his own case to the jury, Judge Medina stated, at page 372:

> In the federal courts, where a defendant has no right to be heard both in person and by attorney, it would seem clear that the control of the proceedings by the court is no less extensive. Cf. *Eury v. Huff*, 4 Cir., 1944, 141 F.2d 554; *Overholser v. DeMarcos*, 1945, 80 U.S. App. D.C. 91, 149 F.2d 23,26.

See also *State v. Townley*, 1921, 149 Minn. 5, 182 N.W. 773, 17 A.L.R. 253, 271, certiorari denied 257 U.S. 643, 42 S.Ct. 54, 66 L.Ed. 413; *Shelton v. U.S.* 205 F.2d 806,812 (5th Cir. 1953).

Based upon the above, the Court, in *Brasier*, concluded tht the appellant had "no constitutional or other right to conduct his own case *pro se* and have the aid of counsel to speak and argue for him at the same time." *Brasier*, 256 F.2d at 478.

Similarly, in *Munz vs. Fayram*, 626 *F.Supp.* 197 (N.D. Iowa, 1985) plaintiff filed a civil rights action *pro se* and thereafter filed a motion for appointment of counsel which was granted. Although counsel was appointed to represent plaintiff, plaintiff continued to file motions *pro se* and asserted that he had a right to dual representation. The United States Magistrate reported and recommended that plaintiff was not entitled to dual representation. Plaintiff objected to the Magistrate's report and argued that the Magistrate's recommendation, if adopted, would deny him his right of meaningful access to the courts and his right to control the lawsuit.

The United States District Court adopted the recommendation of the Magistrate and concluded that there was no constitutional or statutory right to dual

representation. *Munz*, 626 *F.Supp.* at 198 (emphasis supplied), citing *Brasier v. Jeany*, 256 F.2d 474, 478 (8th Cir. 1958). The Court cited 28 U.S.C. §1654 and noted that it provides that parties may plead and conduct their own cases personally or by counsel.

See also *Lanigan v. LaSalle National Bank*, 609 *F. Supp.* 1000, 1002 (N.D. Ill. 1985) where the court concluded that if the defendant attorney is to proceed *pro se*, he must discharge any other lawyer who has filed an appearance on his behalf since the rights of self-representation and representation by counsel may not be exercised at the same time). (Emphasis supplied).

Judge Cowen has always afforded petitioners the opportunity to make the choice the law allows as set forth in case law and statute. During petitioners' November 26, 1986 motion, Judge Cowen specifically stated:

> THE COURT: I told you yesterday if your attorney wants to sit there, and not be an attorney, there is no problem. But I don't want him there as an attorney, half as an attorney, or in some other peculiar way guiding you and giving you advice, and not being of record. If he is the attorney, I want him to be the attorney and responsible for any applications. Because it is quite obvious that it is very difficult dealing with you, when you are *pro se*, and if I have to deal with you when you are *pro se*, and you have an attorney who is really not your attorney, it is going to be impossible.
>
> MR. JONES: Yes, sir.
>
> THE COURT: I want someone responsible. If you are the person that wants to be responsible, there is no problem. If you attorney wants to enter an appearance and be your attorney, that is all right. If he

doesn't want to be your attorney, he can just sit there and observe the proceedings, but I don't want him to act as your attorney during these proceedings, while he is sitting there.

MR. JONES: Wonderful, your Honor.

THE COURT: Unless he enters an appearance.

MR. JONES: Wonderful. I really appreciate that clarification, and I accept responsibility on the way we posited that to you yesterday perhaps our way of discussing it caused the problem which appears to be cured with what you just said now. So I accept responsibility. (Transcript dated November 26, 1986, pages 5:5 through 6:6)

Clearly Judge Cowen had the discretionary power to control and regulate the orderly procedure of this litigation and petitioners have not been denied any statutory or constitutional rights to assistance of counsel, as they allege.

In conclusion, the Supreme Court does not have jurisdiction under 28 U.S.C. §1254(1) or 28 U.S.C. § 2403(a) and should not grant this Petition. Moreover, there is absolutely no basis for petitioners' claim of a "right to assistance of counsel." Petitioners assertions are weak, frivolous and wholly unsupported by the decisional authority cited by them. Even if jurisdiction was found to exist, certainly the claim falls far short of the special and important reasons necessary to justify Supreme Court review.

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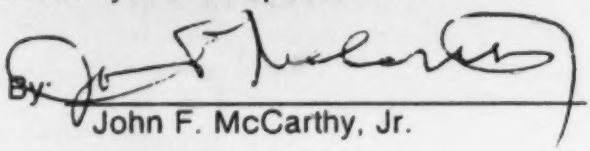
CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for certiorari should be denied.

McCARTHY AND SCHATZMAN, P.A.
Attorneys for Respondent

By: 
John F. McCarthy, Jr.

Dated: February 4, 1988

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APPENDIX

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

JOHN JONES, SR. AND GAIL KIM JONES, his wife,	:	Civil Action No. 84-4528 (REC)
Plaintiffs,	:	
vs.	:	
PRINCETON UNIVERSITY, TRUSTEES OF PRINCETON UNIVERSITY, PRINCETON PLASMA PHYSICS LABORATORY, PRINCETON UNIVERSITY SECURITY DIVISION, OFFICER WATSON AND OFFICER TRANI, individually and as Agents of Princeton University and Princeton University Security Division, PLAINSBORO POLICE DEPARTMENT, SERGEANT MICHAEL DONAHUE AND OFFICER ROBERT LASKO, individually and as Agents of Plainsboro Police Department,	:	ORDER GRANTING SUMMARY JUDGMENT
Defendants.	:	

THIS MATTER having been opened to the Court by defendants Princeton University, The Trustees of Princeton University, Princeton University Plasma Physics Laboratory, Princeton University Security

Division, Officer Watson and Officer Trani, individually and as Agents of Princeton University and Princeton University Security Division through their attorneys, McCarthy and Schatzman, P.A., by Michael A. Spero, Esq., on Motion for an Order pursuant to Rule 56, F.R.C.P., granting these defendants summary judgment and the Court having considered the pleadings and Memoranda submitted by the parties and having heard oral argument, and for the reasons expressed in this Court's oral opinion of July 6, 1987;

IT IS on this 8th day of July, 1987, ORDERED that summary judgment be entered in favor of defendants Princeton University, The Trustees of Princeton University, Princeton University Plasma Physics Laboratory, Princeton University Security Division, Officer Watson and Officer Trani, individually and as Agents of Princeton University and Princeton University Security Division, and against plaintiffs John Jones, Sr. and Gail Kim Jones, his wife, dismissing the following counts of the complaint with prejudice and with costs to be taxed by the Clerk: First Count, § 20(b),

20(d), 20(e) regarding the Eighth Amendment to the United States Constitution, Fourth Count, Fifth Count and Sixth Count.

ROBERT E. COWEN,
U.S.D.J.